

Date of decision: 2-2-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.K. KESHOTE, J  
(2-2-1996)

Mr. I.S. Supehia for the petitioner  
Mr. D.A. Bambania for the respondents.

C.A.V. JUDGMENT:

Heard the learned counsel for the parties.

The petitioner who is holding the post of P.S.I. and posted at Barwala Police Station filed the present petition under Article 226 of the Constitution of India challenging the order of the respondents dated 19-6-1995 by which he was ordered to be placed under suspension both on the ground of departmental inquiry in contemplation as well as criminal complaint filed against him.

2. On 22-6-1995 the writ petition was listed for admission before this Court. An application for amendment of the writ petition has been filed by the petitioner on the said date which was allowed. Notice of the writ petition was ordered to be issued to respondents, returnable on 6-7-1995. Further application for amendment of the writ petition has come up from the petitioner on 19-7-1995. By way of this amendment application the petitioner sought permission of this Court to challenge another order dated 23-6-1996, by which it was ordered to place the petitioner under suspension both in contemplation of the departmental inquiry as well as a criminal complaint.

3. Though the learned counsel for the petitioner has made manifold submissions, in the petition challenging the legality, propriety and correctness of the orders of suspension, but as this writ petition is to be disposed of on the ground of availability of alternative remedy to the petitioner, I do not consider it necessary to advert to all those contentions. Secondly, I do not consider to give decision on merits of the case as it may prejudice either way the parties to the petition, when the matter has to be disposed of on the ground of availability of alternative remedy.

4. The facts briefly stated for the purpose of disposal of this writ petition are as follows:

Two criminal complaints have been filed against the petitioner - one bearing being Crime Register No.12/95 at the Barwala Police Station for the offence under section 66(1)(b) and section 85(1)(3) of the Bombay Prohibition Act. Another complaint being Crime Register No.40/95 lodged at the same police station, where the petitioner is posted, for offence under section 25(1) of the Arms Act. The conduct of the petitioner who was in charge of Barwala Police Station of taking liquor as well as being in possession of illegal arms is considered to be a grave misconduct for which departmental inquiry is contemplated against him. It is not the case of the petitioner that for the said misconduct departmental proceedings could not be initiated against him. Learned counsel for the petitioner contended that the

5. Rule 3 of the Bombay Police (Punishment and Appeals)

Rules 1956 provides for the punishment which could be given to a police officer to whom these rules apply, after he is being found guilty of a misconduct in a departmental inquiry. Sub-rule (1A) of Rule 3 of the aforesaid Rules provides that the appointing authority or any authority to which it is subordinate or any other authority empowered by the State Government in this behalf may place a police officer under suspension where an inquiry into his conduct is contemplated or is pending or a criminal complaint against him is pending investigation or trial. Explanation to the sub-rule provides that suspension of a police officer under this sub-rule shall not be deemed to be a punishment as specified in clause (a)(2) of sub-rule (1) of rule 3. The aforesaid provision leaves no doubt that the authority which made the order of suspension of a police officer may revoke the same at any time or it may be revoked by a higher authority to which the officer who made the order is subordinate. The grievance which has been made by the petitioner in the writ petition that he could not have been placed under suspension on both the grounds, i.e. in contemplation of departmental inquiry as well as pending investigation of criminal complaint, can be better gone into by the authority who passed the order or the next higher authority to which he is subordinate. The other grievance which has been made that it is not a case where looking to the misconduct alleged or the charges levelled against him in the criminal case, he should have been placed under suspension, are matters which could have been properly appreciated by the authority. These are matters which have to be brought to the notice of the authority who passed the order of suspension or to the next authority to which he is subordinate, by the petitioner before approaching this Court. To approach this court in hot haste in matters of suspension under sub-rule (1-A) of Rule 3 of the Rules, 1956 is unwarranted.

6. Suspension is not a punishment and in case looking

to the charges levelled against him if the petitioner is placed under suspension and where he feels that it is not a case where this power should be exercised, he should have brought all these matters to the notice of the authorities. It is not the end of the matter where the petitioner will not get any relief. After decision of the authorities on the representation of the petitioner made in the matter and he has not been given the desired relief, the petitioner has a right to approach this Court and in case the a proper case is made out the Court has wide powers to protect the petitioner if any injustice is done to him. In the present case the order of suspension has been passed by the District

Superintendent of Police and in the hierarchy there are many officers above him and the petitioner could have and should have approached either the officer who made the order or the next officer to whom he is subordinate with all the grievance which he has made in this writ petition. The court cannot be oblivious of the fact that if such grievance would have been made, then certainly the officer to whom the petitioner approached by way of filing detailed representation would have examined the same and would have passed appropriate order.

7. In matters where the petitioner complains that the procedure as laid down under the rules has not been followed or that the necessary conditions as laid down under the rules for making the order of suspension are not present, in such class of cases, though there may not be any right of appeal, it is advisable that the petitioner should have first appraised of all these irregularities and illegalities to the authority who passed the order or to the next officer to which the said officer is subordinate. At this stage of suspension, in contemplation of departmental inquiry or pending investigation of a criminal complaint or for both, it is difficult for this court to go into the question of sufficiency of the material to exercise the power of suspension as well as the question whether there is any material to connect the petitioner with the alleged misconduct. The matter could have been different where ..R

mala fides of the authority who made the said order, which is not the case of the petitioner before this Court in this writ petition. In the case where mala fide has not been alleged in making the order of suspension pending inquiry under sub-rule (1-A) of Rule 3 of the Rules 1956, it is expected of the officers first to approach the department in the matter rather than to rush to this court.

8. Under the Rules 1956 sufficient remedial procedure has been provided against an order of suspension which has been made under sub-rule (1-A) of Rule 3. Rule 18 of the Rules, 1956 gives revisional powers to the State Government. Rule 18 of the Rules 1956 reads as follows:

"18. Notwithstanding anything contained in rule 17, the State Government may, of its own motion or otherwise, call for and examine the  
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an order of acquittal (where an original order, order in appeal or order in revision) has been made by an authority subordinate to

it in the exercise of any power conferred on such authority by these rules and may --

(a) confirm, modify or reverse the order, or

(b) direct that further inquiry be held in the case, or

(c) reduce or enhance the punishment inflicted by the order, or

(d) make such other order in the case as it may deem fit;

Provided that where it is proposed to enhance the punishment inflicted by such order or to impose punishment by setting aside the order of acquittal, the Police Officer concerned shall be given a reasonable opportunity of showing cause against the proposed enhancement or punishment."

The State Government has been given power to act suo moto or otherwise to call for and examine the record of any case in which the order including the order of acquittal has been made. The provisions of Rule 18 of the Rules 1956 are wide enough. The words "any case in which an order including an order of acquittal" are sufficiently wide which includes an order which has been made by the authority under sub-rule (1-A) of Rule 3.

9. The net result of the aforesaid discussion is that against the order of suspension the petitioner should have first approached the authority who made the order or the authority to which the said authority is subordinate by filing a detailed representation, or he may approach the State Government by way of revision petition under section 18 of the Rules 1956. Under the Rules, 1956 I don't find any provision which provides that the order of suspension once made under sub rule (1-A) of Rule 3 cannot be revoked at a subsequent stage on making of representation by the concerned officer.

10. In the result this writ petition fails and the same is dismissed. However, in case the petitioner makes any representation to the authority who made the order of suspension or the authority to which the said authority is subordinate or by filing revision petition before the State Government within a period of one month from today, the same shall be decided as expeditiously as possible, but not later

than four months from the date of receipt of the same.

Notice discharged. No order as to costs.

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corrections carried out.

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